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December 17, 2002

**VIA ELECTRONIC AND
FIRST CLASS MAIL**

Judith R. Starr, Chief Counsel
Office of Chief Counsel
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, Virginia 22183-1618

Attention: NPRM-Section 352 Unregistered
Investment Company Regulations

**Re: Proposed Anti-Money Laundering Program
Rule for Unregistered Investment Companies**

Dear Ms. Starr:

We are writing to follow up on our letter of November 25, 2002, in which Schulte Roth and Zabel LLP, on behalf of certain of our private investment funds or "unregistered investment company" clients, responded to the Treasury's request for comments with respect to the proposed rule applying section 352 of the USA PATRIOT Act to unregistered investment companies. In that letter, among other points, we indicated that the proposed rule does not specify which federal regulator would examine private investment funds or unregistered investment companies for compliance with the anti-money laundering ("AML") program provisions. We understand that absent an explicit provision delegating oversight to a particular examiner, the default inspection authority for the Department of Treasury would in this context probably be the Internal Revenue Service.

In our earlier letter, we proposed that investment advisers who are primarily invested in securities be subject to examination by the SEC, regardless of whether they are also registered with the CFTC as commodity pool operators ("CPOs"), whereas funds that are registered solely as CPOs be subject to examination by the CFTC or the NFA. We have had

further opportunity to examine the viable choices for the appropriate regulatory authority and now propose an additional option that appears both logical and practicable. For each fund that already has a federal regulator with oversight responsibility and prior knowledge of the fund, we believe it efficient to retain that oversight with respect to the fund's AML compliance obligations. Those regulators, which include the SEC and the CFTC, have the additional advantage of extensive experience overseeing compliance in the securities and futures industries. Thus, we recommend generally that the federal examiner designated in the final rule be the examiner which already has jurisdiction to examine the fund. We recognize however, that some funds are subject to the jurisdiction of both the SEC and the CFTC and, further, that some funds are subject to neither jurisdiction. We therefore propose the following specific suggestions.

We suggest that the appropriate examining authority for a private investment fund with respect to its AML program provisions be determined as follows: investment managers registered solely as CPOs or commodity trading advisors ("CTAs") should be subject to examination by the CFTC (or the NFA); investment managers registered solely at the federal level as investment advisers should be subject to examination by the SEC. We defer to the judgment of the CFTC and the SEC with respect to investment managers that are dually registered as investment advisers and CPOs/CTAs and with respect to investment managers that are not registered in either capacity. We respectfully request that, in any event, only one examining authority oversee the AML obligations of each private investment fund. Moreover, since the AML program for a CPO/CTA or an investment adviser operating multiple funds is likely to be the same for each fund, we suggest that only one of the two designated regulators take responsibility for examining the group of funds in total. Such an approach would avoid unnecessary duplication of effort.

We thank you for the opportunity to comment further on the proposed rule, and we hope that the various issues and concerns raised in this letter will be carefully considered by Treasury in formulating an appropriate, yet practicable, final rule. Should you desire to discuss any of the above comments in greater detail, please do not hesitate to contact Steven Fredman at (212) 756-2567 or Betty Santangelo at (212) 756-2587.

Respectfully submitted,

Steven J. Fredman

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Judith R. Starr, Chief Counsel
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cc: Via Electronic Mail

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